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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,167	05/31/2006	Chang-Yong Lee	4220-129 US	1363
26817 7590 03/25/2011 MATHEWS, SHEPHERD, MCKAY, & BRUNEAU, P.A. 29 THANET ROAD, SUITE 201 PRINCETON, NJ 08540				
EXAMINER				
THAKUR, VIREN A				
ART UNIT		PAPER NUMBER		
1782				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/581,167

**Applicant(s)**

LEE ET AL.

**Examiner**

VIREN THAKUR

**Art Unit**

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 8, 2011 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 1 recites the limitation "30-70 wt% of cooking water" but is not clear as to what this is a weight percent of. For instance, the claim does not specify whether this weight percent is of total water added or whether this can be the weight percent based on the rice.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kageyama (US 5,834,049) in view of Ohta (US 4,892,747) and Itakura et al. (JP05-316972).**

A machine translation of Itakura has been provided and a request has been made for a formal translation, which will be placed in the file upon receipt.

Kageyama discloses a method for preparing rice in aseptic packaging comprising the steps of rinsing raw rice and immersing the rice in water (col. 3, line 65). The rice is put in a heat resistant plastic bowl (col. 3, lines 49-63) and sterilized at 140°C 6-10 times for 5 seconds (col. 4, lines 14-44). The sterilization time used by Kageyama is in

such close proportion to the claimed 4.5 seconds, that one having ordinary skill in the art at the time of the invention would expect the conditions to impart the same properties. It is then disclosed to add cooking water to the bowl in an aseptic space and cook the rice in the desired manner, followed by sealing and wrapping the bowl (col. 5, lines 10-40).

Kageyama discloses cooking the rice in a known manner (col. 5, lines 19-20) but claim 1 differs in specifically reciting adding 30-70% of cooking water into the bowl, cooking the rice, adding the residual amount of the cooking water into the bowl, leaving aside the bowl for 12 minutes and then cooling the bowl in a 10°C water bath for 15 minutes.

However, Ohta discloses a method of cooking rice gruel where 2.5 kg of rice is cooked in 4 liters of water, and following the first cooking; 5 liters of water was added and the product was further heated for 20 minutes (see column 5, lines 13-18). This equates to a first and second addition of water where the first addition would have been 44% of the total amount of cooking water (9 liters). Since Kageyama teaches that the sterilized rice can be cooked in any manner and since Ohta teaches a first addition of water and a subsequent second addition of water for the purpose of making rice gruel, to thus modify Kageyama and employ the rice cooking steps as taught by Ohta would thus have been obvious to one having ordinary skill in the art for the purpose of preparing a rice gruel.

Regarding the limitation "leaving aside the bowl for 12 minutes" it is noted that after the second addition of water, Ohta teaches "leaving aside" for 20 minutes. The

term "leaving aside" is broad and thus reads on, for instance, one of the cooks leaving the bowl aside, so that another cook can tend to the bowl. Also, leaving aside does not exclude some other step occurring (such as cooking), especially since applicants leave the bowl aside for this same purpose. It is noted however, that Ohta also teaches that the time to which the cooked rice was exposed to the second water addition step can be between 1-30 minutes (see column 2, lines 1-8). It is further noted that the particular time for additional heating would also have been a function of the amount of rice that was being cooked. In this case, Ohta treats 5 kg of rice for 20 minutes. Obviously, if less rice were desired to be cooked, it would have been obvious to have employed the second water treatment step for less time.

Furthermore, it is noted that Ohta teaches several multiple water addition processes for making rice gruel. For instance, from column 2, line 66 to column 3, line 38, Ohta teaches cooking rice using 1 liter of water and then a subsequent cooking step using between 0.5-2 liters of water, for 30 minutes. It is also noted that applicants appear to employ the "leaving aside for 12 minutes" step for the purpose of further cooking. Ohta also teaches the second water addition step for further cooking. Therefore, to employ 12 minutes for further cooking, when the art already teaches a second cooking step which encompasses applicants' claimed time would thus have been an obvious result effective variable, routinely determined through experimentation for the purpose of producing rice gruel. It is further noted that the claims do not recite a particular amount of rice that is being cooked that would require being left aside for 12 minutes.

In an alternative interpretation, it is noted that the Ohta also teaches a "leaving aside" treatment for 15 minutes (with heated water and subsequent cooling to room temperature), which includes a water solution that includes dietary fiber, carrageenan, xanthan gum, pectin and Arabic gum (see column 3, line 64 to column 4, line 8). Therefore, since Ohta already teaches a first water cooking step and a subsequent water addition step (treatment of cooked rice in a 90 °C water which is allowed to cool to room temperature), to thus employ such a second water treatment step would have been obvious to one having ordinary skill in the art, for the purpose of achieving the desired flavor to the rice gruel.

Regarding the cooling in water having a temperature of 10 °C for 15 minutes, it is noted that Itakura et al. teaches retaining a particular degree of firmness and mouthfeel by cooling using 10 °C water for 5 minutes (see paragraphs 0018-0019 and paragraph 0021-0023 of the machine translation). Although Itakura et al. teaches cooling to 30 °C within 5 minutes, if a larger portion of rice was to be cooled to 30 °C, or if it was desired to cool to a temperature below 30 °C, it would have been obvious to one having ordinary skill in the art to extend the cooling time in the 10 °C water. Therefore, to cool the rice using 10 °C water for 15 minutes would thus have been an obvious result effective variable, routinely determined through experimentation for the purpose of lowering the temperature of the cooked rice, while also ensuring that the rice still retains its grain shape while also providing improved mouthfeel to the rice porridge.

***Response to Arguments***

7. The rejections under 35 U.S.C. 112, 2nd paragraph have been withdrawn.
8. On page 3 of the response, applicants state that the bowl is left aside for 12 minutes before cooling and thus, the combination does not disclose the cooking method recited in the claim. It is noted however, that in being left aside, applicants still appear to be cooking. Since the term "left aside" is broad and does not exclude that this step could also incorporate some other treatment, such as further cooking, this argument is not persuasive. For instance, the bowl can be "left aside" by the preparer but can still undergo some form of cooking, or can be "left aside" by one prepare but further handled by another preparer.
9. Applicants arguments on page 4 of the response that there might be motivation for adding carrageenan for stability but that there does not appear to be motivation that the cooking process will be the stabilizing factor has been considered but is moot, in view of the grounds of rejection above. In any case, it is further noted that following the improved stabilization of the Ohta process would also appear to have also employed a second water addition and treatment step. It is further noted that Itakura also teaches a step of "leaving aside" where the cooked rice is treated with heated water to lower the temperature to between 75-85°C, with a subsequent cooling step using water that can have a temperature of 20-70°C (see at least paragraph 0017) and further teaches on



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paragraph 0021 of the machine translation, a cooling step employing 10°C water for cooling to 30°C.

10. On pages 4-5 of the response, applicants assert that the motivation to use a water bath to discourage microbial growth was incorrect and was further not directed to the ordinarily skilled worker but to the specialized conditions of the catering industry is moot. This argument is moot in view of the grounds of rejection above.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. "Congee - Rice Gruel recipe" discloses a second water addition step after the boiling of the rice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Viren Thakur/  
Examiner, Art Unit 1782